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Local Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIERRA CLUB, GREAT BASIN RESOURCE)	Case No. 3:08-cv-01409-WHA
WATCH, AMIGOS BRAVOS, and IDAHO)	
CONSERVATION LEAGUE,)	
Plaintiffs,)	COMPLAINT FOR DECLARATORY AND
v.)	INJUNCTIVE RELIEF
STEPHEN JOHNSON, Administrator, United)	
States Environmental Protection Agency, and)	
MARY E. PETERS, Secretary, United States)	
Department of Transportation,)	
Defendants.)	

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF -1-

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INTRODUCTION

1
2 1. This is an action for declaratory and injunctive relief pursuant to the
3 Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and
4 Administrative Procedure Act (“APA”). In order to reduce the risk of improperly disposed
5 hazardous substances, CERCLA requires defendants Johnson and Peters to promulgate
6 regulations that would require certain facilities involved with such substances to establish and
7 maintain evidence of financial responsibility. These “financial assurance” regulations are
8 intended to ensure that facilities involved in any way with hazardous substances will remain
9 financially responsible for cleaning up improperly disposed hazardous substances.

10 2. CERCLA required defendants to publish notice of priority categories for such
11 regulations no later than December 1983, promulgate the regulations themselves beginning in
12 December 1985, and impose financial assurance requirements as quickly as could reasonably be
13 achieved but in no event later than four years after promulgation. Defendants, however, have
14 taken none of these steps. Plaintiffs Sierra Club, Great Basin Resource Watch, Amigos Bravos,
15 and Idaho Conservation League (collectively, “Sierra Club”) bring this action to compel
16 defendants to follow the requirements of CERCLA and promulgate financial assurance
17 regulations on a reasonable but rigorous schedule.

JURISDICTION

18
19 3. This action arises under CERCLA’s citizen suit provision, 42 U.S.C.
20 § 9659(a)(2), as well as 28 U.S.C. §§ 1331 and 1361, and this Court may issue a declaratory
21 judgment and grant further relief pursuant to 42 U.S.C. § 9659(c) and 28 U.S.C. §§ 2201 and
22 2202. In addition, and/or in the alternative, plaintiffs have a right to bring this action pursuant to
23 the Administrative Procedure Act, 5 U.S.C. §§ 701 to 706.

24
25 4. Venue is appropriate in this District under 28 U.S.C. § 1391 because plaintiff
26 Sierra Club resides in this District. See also 42 U.S.C. § 9659(b)(2) (allowing but not requiring
27 venue in the District Court of the District of Columbia).

1 United States Environmental Protection Agency (EPA) and the Department of Transportation
2 (DOT) to comply with CERCLA, the purpose of which is to control and remediate the release of
3 hazardous substances into the environment. EPA and DOT's failure to carry out statutorily
4 mandated promulgation of regulations under CERCLA increases the likelihood that plaintiffs'
5 members and their environment will be exposed to unremediated releases of hazardous
6 substances.

7 11. Plaintiffs and their members use the rivers, landscapes, and watersheds near
8 facilities that produce, treat, transport, store, or dispose of hazardous substances around the
9 nation for recreational, scientific, aesthetic, commercial, life-sustaining, and spiritual purposes.
10 Plaintiffs and their members derive—or, but for the presence of hazardous substances, would
11 derive—recreational, scientific, aesthetic, commercial, life-sustaining, and spiritual benefits from
12 their use of such places. The past, present, and future enjoyment of these benefits by plaintiffs
13 and their members has been, is being, and will continue to be irreparably harmed by the
14 defendants' disregard of their statutory duties.

15 12. Plaintiffs' members also have an interest in protecting the health of themselves,
16 their children, and their communities. Defendants' failure to promulgate regulations requiring
17 that classes of facilities establish and maintain evidence of financial responsibility consistent
18 with the degree and duration of risk associated with the production, treatment, transportation,
19 storage, or disposal of hazardous substances as required by section 108(b)(1) of CERCLA in the
20 timeframe specified in the Act increases the risk to plaintiffs' members of exposure to hazardous
21 substances and/or increases and prolongs plaintiffs' members' exposure to hazardous substances
22 and their risk of adverse health effects.

23 13. The health effects from exposure to the hazardous substances released by
24 facilities that produce, treat, transport, store, or dispose of hazardous substances, such as the
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1 facilities described above include cancer, birth defects, reproductive disorders, damage to the
2 brain and nervous system, and damage to the respiratory system.

3 14. Defendant Stephen Johnson is the Administrator of the United States
4 Environmental Protection Agency and in that role is charged with the duty to promulgate
5 regulations pertaining to facilities that generate, handle, store, treat, and dispose of hazardous
6 substances according to the time periods set out in CERCLA.

7 15. Defendant Mary E. Peters is the Secretary of the United States Department of
8 Transportation and in that role is charged with the duty to promulgate regulations pertaining to
9 the transportation of hazardous substances according to the time periods set out in CERCLA.

10 STATUTORY BACKGROUND

11 16. In the wake of the Love Canal disaster, Congress in 1980 enacted CERCLA as the
12 nation's principle statutory vehicle for addressing the cleanup of improperly disposed hazardous
13 substances. It defines federal response priorities, prescribes the liabilities of potentially
14 responsible parties, and specifies the use of a federal trust fund—known as “Superfund”—for
15 cleanup of hazardous waste sites.

16 17. CERCLA also contains important provisions that seek to reduce the risk that new
17 hazardous waste sites will be created in the future and to ensure that potentially responsible
18 parties would remain in a position to fund their cleanup. Congress sought to achieve this in part
19 through establishing requirements that any party involved with the production, transportation,
20 treatment, storage or disposal of hazardous substances demonstrate financial responsibility
21 sufficient to mitigate the risks associated with those activities. Specifically, section 108(b)(1) of
22 the Act provides in pertinent part:

23
24 Beginning not earlier than five years after December 11, 1980, the President shall
25 promulgate requirements (for facilities in addition to those under Subtitle C of the
26 Solid Waste Disposal Act [citation omitted] and other Federal law) that classes of
27 facilities establish and maintain evidence of financial responsibility consistent
28 with the degree and duration of risk associated with the production,
transportation, treatment, storage or disposal of hazardous substances.

42 U.S.C. § 9608(b)(1). Section 108(b)(1) of the Act also provides:

Not later than three years after December 11, 1980, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register.

42 U.S.C. § 9608(b)(1).

18. Section 108(b)(3) further required that:

Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements as quickly as can reasonably be achieved but in no event more than 4 years after the date of promulgation.

42 U.S.C. § 9608(b)(3).

19. By Executive Order, the functions vested in the President in section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act were delegated to the Administrator of EPA. See Executive Order No. 12,580, 52 Fed. Reg. 2923 (January 23, 1987), section 7(d)(1).

20. By Executive Order, the functions vested in the President in section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act were delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft. 46 Fed. Reg. 42237 (Aug. 14, 1981), Section 5(c).

21. Thus section 108(b)(1) of CERCLA required defendants to (1) publish notice of the identification of classes for which financial responsibility requirements would first be developed by December 11, 1983; (2) promulgate requirements that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, treatment, transportation, storage, or disposal of hazardous substances beginning on December 11, 1985; and (3) implement those requirements as quickly as possible, but in no event more than four years after they are promulgated.

I. THE LACK OF FINANCIAL ASSURANCE REGULATIONS INCREASES THE RISK OF HARM TO PEOPLE AND THE ENVIRONMENT FROM IMPROPERLY DISPOSED HAZARDOUS SUBSTANCES.

22. Defendants have not published a notice in the Federal Register nor promulgated regulations for classes of facilities pursuant to section 108(b)(1) of the Act. Plaintiffs are unaware of any existing effort by defendants to comply with these requirements.

23. Facilities that produce, treat, transport, store, or dispose of hazardous substances (in addition to those under Subtitle C of the Solid Waste Disposal Act [42 U.S.C. § 6921 et seq.] and other Federal law) include, but are not limited to, mines, hazardous waste generators, hazardous waste recyclers, metal finishers, and wood treatment facilities. Such facilities are located throughout the United States.

24. In the absence of financial assurances requirements promulgated under CERCLA, such facilities may have inadequate or no requirements to provide financial assurances (such as bonds, trust funds, insurance policies, or letters of credit) that are intended to ensure that such facilities will be financially responsible for remediation of releases of hazardous substances.

25. Since 1980, significant releases of hazardous substances have occurred at many facilities that have been financially unable to pay for the costs of remediation. For example, Asarco, a century-old mining and smelting company, is liable for the environmental cleanup of 94 Superfund sites in 21 states. The bill to clean up Asarco's environmental contamination is estimated at more than \$1 billion, but the company has recently declared bankruptcy. Similarly, Standard Chlorine Corporation (also known as Metachem) is responsible for major chemical releases, including PCBs and dioxin, from its Delaware facility, that contaminated soil, sediment, an aquifer, and surface water. EPA estimates that the total cleanup cost will be approximately \$100 million, but Metachem declared bankruptcy in 2002.

26. Since 1980, significant releases of hazardous substances occurred at many facilities that have not provided evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal

1 of hazardous substances at the facilities. Therefore, there is no guarantee that funds will be
2 available for timely cleanup. For example, the following facilities do not have financial
3 assurance for releases of hazardous substances consistent with the degree and duration of risk
4 associated with their activities: J.R. Simplot Company's Smoky Canyon Mine in southeastern
5 Idaho, where releases of hazardous substances, including selenium and cadmium, have
6 contaminated groundwater, surface water, sediment, and soil, and Chevron Mining Inc.'s
7 (formerly Molycorp) molybdenum mine near Questa, New Mexico where releases of hazardous
8 substances, including cadmium, copper, lead, silver, and zinc have contaminated groundwater,
9 surface water, soil, and sediment.

10 27. When responsible parties are unable to pay for the costs of remediating hazardous
11 substance sites, the costs of such remediation fall to the public. CERCLA provided for the
12 "Superfund" trust fund to cover such costs. However, the tax on crude oil and certain chemicals
13 and an environmental tax on corporations that were the primary sources of revenues for the
14 Superfund trust fund expired in 1995.

15 28. Since 2000, the Superfund program has increasingly relied on revenue from
16 general revenue fund appropriations. For fiscal year 2004, for example, EPA's Superfund
17 appropriation of \$1.2 billion was from general revenue only. Appropriations for the Superfund
18 program have decreased from \$1.9 billion to \$1.2 billion, in constant 2003 dollars, from fiscal
19 year 1993 to fiscal year 2004. The number of Superfund sites and the costs of their cleanup,
20 however, have not lessened during that time, but grown.

21 29. The cost of investigation and cleanup at the "orphan" sites listed on the National
22 Priorities List, where the facility responsible for the release is unable to fund investigation and
23 cleanup, amounts to hundreds of millions of dollars annually. This amount greatly exceeds
24 EPA's annual Superfund budget. Therefore, federal funding is currently not able to finance
25 response activities in a timely and effective manner at numerous Superfund sites.
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30. On January 7, 2004, the EPA Office of Inspector General (OIG) issued a Special Report, "Congressional Request on Funding Needs for Non-Federal Superfund Sites (Report 2004-P-00001)" ("OIG Report"). This report addressed the sufficiency of funding for non-Federal Superfund sites, "including a more detailed review of a limited number of sites to determine if cleanup actions are being stretched out over a greater number of years because of inadequate funding."

31. The OIG Report found that:

In summary, during FY 2003, limited funding prevented EPA from beginning construction at all sites or providing additional funds needed to address sites in a manner believed necessary by regional officials, and caused projects to be segmented into phases and/or scaled back to accommodate available funding. ... [A]s discussed in the body of this report and in the enclosures, sufficient funds were not available to address a limited number of removal, pipeline, and remedial action sites. We estimate that the FY 2003 site-specific funding shortfall was \$174.9 million.

OIG Report at page 1.

32. The OIG Report further explained the ramifications of the \$174.9 million shortfall in the Superfund program:

When funding is not sufficient, construction at National Priority List (NPL) sites cannot begin; cleanups are performed in less than an optimal manner; and/or activities are stretched over longer periods of time. As a result, total project costs may increase and actions needed to fully address the human health and environmental risk posed by the contaminants are delayed.

OIG Report at page 4.

33. The OIG Report describes numerous specific Superfund sites where cleanup was delayed, performed in a less than an optimal manner, or where activities were performed over longer periods of time. Such delays in cleanup and reduction in the scope of remedial action threaten to expose people and the environment to hazardous substances.

34. Numerous facilities that produce, treat, transport, store, or dispose of hazardous substances and that have released hazardous substances to the environment (in addition to those

1 under Subtitle C of the Solid Waste Disposal Act and other Federal law) present a threat to
 2 human health or the environment and require cleanup pursuant to sections 104 or 106 of
 3 CERCLA. 42 U.S.C. §§ 9604 and 9606.

4 35. No regulations promulgated by either EPA or DOT under CERCLA require such
 5 facilities to establish and maintain evidence of financial responsibility consistent with the
 6 duration of risk associated with the production, treatment, transportation, storage, or disposal of
 7 hazardous substances. A substantial number of facilities did not establish and do not now
 8 maintain evidence of financial responsibility consistent with the duration of risk associated with
 9 the production, treatment, transportation, storage, or disposal of hazardous substances.

10 36. CERCLA required the promulgation of financial assurance regulations to reduce
 11 the risk of “orphan” sites where releases of hazardous substances require publicly funded
 12 cleanups and to reduce the delays and inadequacies of such cleanups. The lack of financial
 13 assurance regulations increases the risks of such orphan sites and hence increases the risk that
 14 hazardous substance releases will be cleaned up more slowly, or less completely, than would be
 15 the case if such regulations were in place.

17 CAUSES OF ACTION

18 FIRST CLAIM FOR RELIEF 19 VIOLATION OF 42 U.S.C. § 9608(B)(1)

20 37. CERCLA requires defendants to prioritize, promulgate, and implement
 21 regulations governing financial responsibility requirements for facilities involved with the
 22 production, treatment, transportation, storage or disposal of hazardous substances. 42 U.S.C.
 23 § 9608(b)(1). Such duties were imposed in 1980.

24 38. Defendants have failed to comply with the requirements of 42 U.S.C.
 25 § 9608(b)(1). No regulations have been proposed, let alone promulgated or implemented.

26 39. Defendants’ failure to comply with 42 U.S.C. § 9608(b)(1) constitutes a “failure
 27 of the President or of such other officer to perform any act or duty under this chapter . . . which

1 is not discretionary with the President or such other officer” within the meaning of 42 U.S.C.
 2 § 9659(a)(2).

3 SECOND CLAIM FOR RELIEF
 4 VIOLATION OF 5 U.S.C. § 706

5 40. The Administrative Procedure Act provides Courts with jurisdiction to “compel
 6 agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The APA also
 7 authorizes review of agency action, which includes an agency’s “failure to act.” 5 U.S.C.
 8 § 551(13).

9 41. Defendants failure to prioritize, promulgate, and implement regulations governing
 10 financial responsibility requirements for facilities involved with the production, treatment,
 11 transportation, storage, or disposal of hazardous substances constitutes agency action unlawfully
 12 withheld or unreasonably delayed, in violation of the APA. The action is unlawfully withheld
 13 because it is required by CERCLA. Moreover, a delay of over 20 years is inherently
 14 unreasonable, particularly in light of the importance Congress has assigned to the protection of
 15 people and the environment from hazardous substances.

16 RELIEF REQUESTED

17 WHEREFORE, plaintiffs request that this Court:

18 1. Declare that defendants’ failure to publish notice of the identification of classes for
 19 which financial responsibility requirements would first be developed and their failure to promulgate
 20 requirements that classes of facilities establish and maintain evidence of financial responsibility
 21 consistent with the degree and duration of risk associated with the production, treatment,
 22 transportation, storage, or disposal of hazardous substances constitutes a violation of CERCLA
 23 § 108(b) and/or APA 5 U.S.C. § 706.

24 2. Enjoin defendants Johnson and Peters to comply with the nondiscretionary
 25 requirements of CERCLA § 108(b). Specifically, plaintiffs ask that this Court order defendants to:
 26 a) identify classes for which financial responsibility requirements would first be developed; b) order
 27

1 defendants to publish proposed regulations establishing requirements that classes of facilities
2 establish and maintain evidence of financial responsibility consistent with the degree and duration
3 of risk associated with the production, treatment, transportation, storage, or disposal of hazardous
4 substances; and publish a final rule establishing requirements that classes of facilities establish and
5 maintain evidence of financial responsibility consistent with the degree and duration of risk
6 associated with the production, treatment, transportation, storage, or disposal of hazardous
7 substances.

8 3. Retain jurisdiction of this action to ensure compliance with its decree;

9 4. Award plaintiffs their reasonable fees, costs, expenses and disbursements, including
10 attorneys' fees, associated with this litigation; and

11 5. Grant plaintiffs such further and additional relief as the Court deems just and proper.

12 Respectfully submitted this 11th day of March, 2008.

13
14 /s/ Jan Hasselman

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Local Counsel for Plaintiffs

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

SIERRA CLUB, GREAT BASIN RESOURCE WATCH, AMIGOS BRAVOS, and IDAHO CONSERVATION LEAGUE

(b) County of Residence of First Listed Plaintiff San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

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DEFENDANTS

STEPHEN JOHNSON, Administrator, U.S. EPA, and MARY E. PETERS, Secretary, U.S. Department of Transportation

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 FEDERAL TAX SUITS
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Sec. 9659; 5 U.S.C. Sec. 702

Brief description of cause:

Failure to adopt financial responsibility rules for facilities involved with hazardous waste.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

March 11, 2008

SIGNATURE OF ATTORNEY OF RECORD